



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Chemical Compounding Corporation

File: B-227333

Date: June 15, 1987

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### DIGEST

Agency may award to firm which does not have Food and Drug Administration (FDA) permission to market its product at the time of bid opening since compliance with solicitation requirement for FDA approval is a matter of responsibility which may be determined after bid opening.

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### DECISION

Chemical Compounding Corporation (CCC) protests the award of a contract to any bidder but itself under solicitation No. DLA120-87-B-0666, issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency.

The protest is dismissed. 4 C.F.R. § 21.3(f) (1986).

CCC alleges that it is the lowest responsive offeror in that it is the only offeror to meet the solicitation's requirement that the offeror must be in compliance with section 510(k) of the Federal Food, Drug and Cosmetic Act. CCC argues that DPSC's contention that an offeror may be allowed to submit evidence of compliance prior to award is improper.

We have found that an offeror need not have the requisite 510(k) approval for its product at bid opening, but prior to performance since such approval is a matter of responsibility. Impact Instrumentation, Inc., B-217291, Feb. 26, 1985, 85-1 C.P.D. ¶ 240. Accordingly, DPSC could properly award a contract to an offeror which did not submit evidence of Food and Drug Administration approval with its bid.

The protest is dismissed.

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